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### **REMARKS**

This amendment is being submitted in response to the Advisory Action dated October 3, 2004 and concurrent with a Request for Continued Examination (RCE). In the Final Office Action, claims 1-11 were rejected. By the present Response, claims 1, 2, 4-6, and 10 are amended, claims 3, 7, 9 and 11 are canceled and new claims 12-20 have been added to particularly point out embodiments for protection. Upon entry of the amendments, claims 1-2, 4-6, 8, 10 and 12-20 will remain pending in the present patent application. Reconsideration and allowance of all pending claims are requested in light of the above amendments and in view of the arguments herein below.

### **Rejections Under 35 U.S.C. § 102**

The Examiner rejected claims 1-6 and 8-11 under 35 U.S.C. §102(b) as being anticipated by Fafet et al. (US Patent No. 5,931,152), hereinafter Fafet. A prima facie case of anticipation under 35 U.S.C. § 102 requires a showing that each limitation of a claim is found in a single reference, practice or device. Applicants respectfully traverse this rejection because Fafet does not teach or otherwise disclose each and every element of claims 1-6 and 8-11.

### **Fafet does not teach burner ports that are configured to restrict flame formation out of the burner**

#### **Claims 1-2 and 4-6**

Amended claim 1 recites a burner assembly that includes a burner grate comprising a plurality of humps integrally formed in a glass ceramic cooktop, and distributed around an opening in the cooktop. The burner assembly also includes a burner positioned in the opening and comprising a plurality of burner ports to provide a flame, *wherein the burner is configured to restrict flame formation out of the burner in*

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*selected areas of the burner as a function of non-symmetrical spacing between the burner ports.*

Fafet discloses a glass-ceramic cooking plate for a gas cooking apparatus. The cooking plate includes at least one cooking site comprising a neck region defining an opening and a plurality of humps of the same height distributed around the opening. Further, Fafet discloses the humps being an integral part of the plate.

The Examiner considers that the humps in Fafet "are positioned a sufficient distance from the flame ports of the burner such that the flames from these ports will not impinge upon the burner grate". Applicants submit that nowhere in Fafet is the positioning of the humps with respect to the burner quantified or otherwise described. The Examiner is relying on Figs. 2 and 4 to make a subjective determination regarding the positioning of the humps, which Applicants submit is not capable of instant and unquestionable demonstration. The Examiner is relying on Figs. 2 and 4 to make a **subjective determination regarding the positioning of the humps, which Applicants submit is not capable of instant and unquestionable demonstration so as to avoid dispute** (see MPEP § 2144.03 citing *In re Ahlert*, 424 F. 2d 1088, 1091, 165 USPQ 418, 420(CCPA 1970)).

Nevertheless, even if one were to assume *Arguendo* that Fafet's positioning of humps at a sufficient distance from the flame ports may be one way to mitigate flame impingement on the burner grate, Applicants are not attempting to claim *positioning of humps*. Rather, as recited in Applicant's claim 1, the plurality of burner ports are configured to restrict flame formation out of the burner as a function of non-symmetrical spacing between the burner ports.

Claims 2 and 4-6 are further particularize how flame formation is restricted. For example, as emphasized in amended claim 2 the spacing between a first set of burner

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ports and a second set of burner ports is not equal. Furthermore, as recited in claim 4 the burner ports are spaced apart such that flame formation out of the burner ports is not directed toward the burner grate. Additionally, claims 5 and 6 recite burner port patterns including a subset of the burner ports being arranged at an angle with respect to a radial direction and having a single inlet end and a bifurcated outlet end such that flames exiting at respective outlets are directed away from the burner grate.

Absent any teaching regarding these recitations of claim 1, Fafet simply cannot support a *prima facie* case of anticipation. Therefore, Applicants submit that independent claim 1 is allowable and respectfully request the Examiner to reconsider rejection of the claim. The Examiner has not specifically addressed the rejection of claims 2-6 and 8 in the Office Action. Therefore, Applicants request the Examiner to address claims 2-6 and 8. As claims 2 and 4-6 depend from claim 1, Applicants submit that these claims are similarly allowable for at least the reasons set forth above with respect to claim 1.

**Fafet does not teach restriction of flame formation by flame-free portions  
between burner ports positioned to coincide with the burner grate to cause  
flames to be directed away from the burner grate**

**Claim 10**

Amended claim 10 recites a burner assembly that includes a burner grate comprising a plurality of humps, integrally formed in a glass ceramic cooktop, and distributed around an opening in the cooktop. The burner assembly also includes a burner positioned in the opening and comprising a plurality of flame free portions between burner ports, wherein the flame free portions are positioned to coincide with the burner grate proximate the burner to cause flames produced by the burner to be directed away from the burner grate.

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Applicants submit that at the very least Fafet does not teach or otherwise suggest a burner comprising flame free portions that are specifically positioned to coincide with the burner grate to cause flames produced by the burner to be directed away from the burner grate.

Accordingly, for at least the reasons set forth above, Applicants submit that Fafet does not anticipate claim 10. Therefore, Applicants submit that independent claim 10 is allowable and respectfully request the Examiner to reconsider rejection of the claim

#### **New Claims 12-20**

Independent claim 12 recites a system comprising a burner grate and a burner comprising a first plurality of burner ports configured to provide a first unrestricted flame flow out of the burner. The burner also includes a second plurality of burner ports configured to provide a second restricted flame flow out of the burner based at least in part upon positioning of the burner with respect to the burner grate. As discussed above, Applicants submit that at the very least, the cited references do not teach or otherwise suggest first and second set of burner ports for providing first unrestricted and second restricted flame flows.

Claims 13-19 are further directed to restricting flame formation by the second set of burner ports. For example, as emphasized in claim 14 the second plurality of burner ports are positioned in the burner at locations selected to correspond with the burner grate. Moreover, as recited in claim 15 the second restricted flame flow is restricted due to an outlet port size of the second plurality of burner ports in relation to an outlet port size of the first plurality of burner ports. Furthermore, as recited in claim 16 the second set of burner ports are positioned in the burner at an orientation designed to direct the flame away from the burner grate. For example, the second plurality of burner ports are oriented to direct the second flame flow at an angle with respect to a radial direction as

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emphasized in claim 17. Further, as recited in claims 18 and 19 the second plurality of burner ports are configured to restrict flame formation out of the burner in at least one area above or beside the burner.

Independent claim 20 recites a burner comprising a first plurality of burner ports configured to provide a first unrestricted flame flow out of the burner and a second plurality of burner ports configured to provide a second modified flame flow out of the burner. The second plurality of burner ports are arranged in a radial pattern such that flame formation out of the second plurality of burner ports is restricted or directed away from a complementary burner grate. Clearly, the cited references do not teach or suggest such an arrangement.

### Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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